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17 SYSTEMS, INC.

18
19 CISCO SYSTEMS, INC.,

20 Plaintiff,

21 v.

22 ARISTA NETWORKS, INC.,

23 Defendant.

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ATTORNEYS FOR DEFENDANT ARISTA
NETWORKS, INC.

Case No. 5:14-cv-05344-BLF (NC)

**PARTIES' UNDISPUTED STATEMENT
OF THE CASE; JURY INSTRUCTION
NO. 2**

Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 Plaintiff Cisco Systems, Inc. and Defendant Arista Networks, Inc. hereby provide the
 2 following undisputed: (1) Neutral Statement of the Case, to be read in advance of the Juror
 3 Questionnaire; and (2) Preliminary Jury Instruction No. 2 re Claims and Defenses:

4 **STIPULATED: Neutral Statement of the Case**

5 The plaintiff in this case is Cisco Systems, Inc. The defendant is Arista Networks, Inc.

6 This is a case involving claims of copyright and patent infringement. Cisco and Arista
 7 sell networking switches. Cisco asserts that Arista infringed Cisco's copyrights. Arista asserts
 8 that it did not infringe any of Cisco's copyrights, and various other defenses. Cisco also asserts
 9 that Arista has infringed one of Cisco's patents. Arista denies that it has infringed the patent.

10 **STIPULATED: Preliminary Instruction No. 2 re Claims And Defenses**

11 To help you follow the evidence, I will give you a brief summary of the positions of the
 12 parties:

13 The plaintiff in this case is Cisco Systems, Inc., which I will refer to as "Cisco," and the
 14 defendant is Arista Networks, Inc., which I will refer to as "Arista." This is a case involving
 15 claims of copyright and patent infringement. Cisco and Arista sell networking switches.

16 Cisco asserts that Arista infringed Cisco's copyrights by copying certain elements of
 17 Cisco's user interface and copying certain portions of Cisco's product manuals. [Cisco also
 18 asserts that Arista infringed its copyrights willfully.] Cisco has the burden of proving its claim of
 19 copyright infringement [and its claim of willfulness]. Arista contends that it does not infringe any
 20 of Cisco's copyrights [and that the asserted elements of Cisco's works are not protected by
 21 copyright because of the merger and scènes à faire doctrines {should the Court determine these
 22 are not affirmative defenses}]. Arista also asserts as affirmative defenses that any use of the
 23 accused elements is a "fair use" under the law, [that the asserted elements of Cisco's works are
 24 not protected by copyright because of the merger and scènes à faire doctrines {should the Court
 25 determine these are affirmative defenses }], and that Cisco has [misused its copyrights,]
 26 abandoned its copyrights[, and waived its rights to enforce the copyrights at issue]. Arista has the
 27 burden of proof on these affirmative defenses.

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1 Cisco also asserts that Arista has infringed United States Patent No. 7,047,526, which I
 2 and the parties will refer to as the “‘526 Patent.” [Cisco also asserts that Arista infringed the ’526
 3 Patent willfully.] Cisco has the burden of proving its claim of patent infringement [and its claim
 4 of willfulness]. Arista denies that it has infringed the ’526 Patent.

5
 6 DATED: November 14, 2016

Respectfully submitted,

7
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17 Dated: November 14, 2016

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21 Attorneys for Defendant Arista Networks, Inc.

22
23 **ATTORNEY ATTESTATION**

24
25 I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this
26 document has been obtained from the signatory indicated by the "conformed" signature (/s/) of
27 John M. Neukom within this e-filed document.

28
29 /s/ Brian L. Ferrall
BRIAN L. FERRALL